



Beth A. Wood, CPA
State Auditor

STATE OF NORTH CAROLINA
Office of the State Auditor

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April 30, 2009

Mr. Britt Cobb, Secretary
North Carolina Department of Administration
116 West Jones Street
Raleigh, North Carolina 27603

Dear Secretary Cobb:

The Office of the State Auditor received a complaint through the *State Auditor's Hotline* concerning the operations of the North Carolina State Veterans Nursing Homes. On March 3, 2004, the North Carolina Department of Administration, Division of Veterans Affairs (Veterans Affairs) and a contractor (Contractor) entered into a contract for the management and operation of the two State-owned veterans nursing home facilities located in Fayetteville and Salisbury. Contractor employees operate both homes with the exception of one State employee at each location who acts as the service officer.

Pursuant to North Carolina General Statute § 147-64.6, our investigation of this matter resulted in the following findings and recommendations.

1. Non-State Employees Drive State-owned Vehicles in Violation of State Regulations

Contractor employees drive State-owned vehicles to transport veterans to various locations such as doctor appointments or activities (shopping, movies, etc). However, the *Motor Fleet Management Regulations Manual* prohibits non-State employees from driving State vehicles.

Section VII of the *Motor Fleet Management Regulations Manual* specifies that, "State-owned passenger-carrying vehicles shall be driven only by state employees..." Also, the North Carolina Administrative Code forbids contractors from driving State vehicles as follows: "Non-state employed persons...are not allowed to drive...state-owned vehicle(s)." ¹

Department of Administration management considered the Contractor employees as "contractual agents of the state"² which would allow the Contractor employees to

¹ 01 NCAC 38.0408

² Letter from the North Carolina Department of Insurance Risk Manager to North Carolina State University, dated April 4, 1995

drive State vehicles. They based their reasoning on a similar situation involving university graduate students. However, in 1992, a specific exception was created in the Administrative Code for graduate students. No such exception exists for the veterans nursing home Contractor employees.

Recommendation:

The Department of Administration should find a legal remedy that authorizes Contractor employees of the State-owned veterans nursing homes to drive State-owned vehicles.

2. Contract Duration Exceeded Statutory Limitations

The contract duration for the management and operation of the two State-owned veterans nursing home facilities was five years with five one-year extensions (10 years total). However, North Carolina General Statute § 165-50 limits contract lengths for operation of the veterans homes to five years. Specifically, the Statute reads, “Any contract awarded under this section shall not exceed five years in length.”

Veteran Affairs received permission from the Department of Administration, Division of Purchase and Contract (P&C) to offer a 10-year contract for the operation of the two veterans nursing homes. Therefore, the contract stated, “the contract to operate both facilities will not exceed a period of ten (10) years in length based on the effective operational date of the Salisbury Facility.” Pursuant to administrative law³, P&C did not have the authority to change the meaning of a statute.

We requested an opinion from P&C regarding the appropriate contract length. P&C consulted with representatives from the Attorney General’s Office who provided us an opinion as follows:

“Accordingly, P&C and the SPO do not have the authority under 01 NCAC 5B .0301 4(a) to supersede the intent of the General Assembly expressed in GS 165-50 to advertise and approve a contract to operate veterans’ homes for a contract duration that exceeded five years. Therefore, the inclusion of the five one-year renewal options was in error when the contract was let in 2004,” and “ the former SPO’s and Deputy Director’s...approving of the proposed extension of the contract was in error.”

³ Duke Power Co. v. Clayton 274 N.C. 505, 511-12 (1968), *citing and quoting, In re Vanderbilt University*, 252 N.C. 743, 747, 114 S.E. 2d 655, 658 (1960) (The court “will not follow an administrative interpretation which, in its opinion, is in conflict with the clear intent and purpose of the statute under consideration.”).

Recommendation:

The Department of Administration should comply with G.S. § 165-50 by soliciting a proposal for a new contract for the procurement of services to manage, administer, and operate the two State veterans nursing homes.

3. Inventory Control Weaknesses

Veterans Affairs did not conduct an annual physical inventory of computers at the two veterans nursing homes as required by section 4:04 of the contract. After our investigation began, the State Veterans Nursing Homes Program Manager issued a memorandum on October 23, 2008 to inform each facility to conduct such an inventory. Our separate on-site inspection of each facility revealed seven computers that were not properly tagged with an asset number at the Fayetteville home.

In addition, the service officer at the Fayetteville home told us that eight new computers purchased by the State were taken to the Fayetteville home in January 2007. When conducting its physical inventory in October 2008, the Fayetteville home discovered four of the new computers were missing. The Salisbury home found three of the missing computers at its facility. We discovered that the State Veterans Nursing Homes Program Manager transferred those three computers to the Salisbury home but he did not document the transfer. One of the eight new computers remains missing. The lack of proper inventory control contributed to the missing computer.

Recommendation:

Veterans Affairs should continue to ensure physical inventories are conducted annually, computers are properly tagged for identification, and equipment transferred from one facility to another is properly documented. Any surplus computer equipment must be fully documented as well. In addition, the inventory list should be maintained and all State property safeguarded in compliance with the policies and procedures set forth by the Office of the State Controller.⁴

4. Noncompliance with Contract Terms

Veterans Affairs purchased computers totaling \$41,366 which should have been provided by the Contractor according to contract terms. As a result, Veterans Affairs may have paid the Contractor a management fee inflated for the costs of the computers purchased by Veterans Affairs.

⁴ Changing Location of Assets Policy - Change in Location within Agency; Tagging Policy; Missing/Stolen Assets Policy

Mr. Britt Cobb, Secretary

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The contract states, under section 4:09, that the Contractor will provide the “computer system.” Contract addendums clarify that the Contractor will furnish the computers and that the cost should be included in the management fees. Inspection of the computers located at each facility revealed that the computers were purchased by Veterans Affairs while the Contractor provided only the network accounting system that runs through a router connected to the Contractor’s headquarters in Georgia.

Further inquiry indicated Veterans Affairs’ intentions were inconsistent with the contract terms. Veterans Affairs management informed us that it was always their intention that the State would furnish the computers. However, the Contractor believed they were responsible for providing the computers as specified in the contract. The Contractor asserted to us, “It is our understanding that we provide the computers at the North Carolina Veterans Homes which we do via our corporate IT department.”

Recommendation:

Veterans Affairs should recover the cost of computers purchased or seek a retroactive reduction of the management fee for these purchases. In addition, Department of Administration management should write future contracts in unequivocal language reflecting the full intentions of the agreeing parties including what will be provided and by whom consistent with the North Carolina Administrative Code. Requirements for State contracts are set forth in the Administrative Code which states, “...Task descriptions shall contain...(c) what the State shall furnish; (d) what the contractor shall furnish...”⁵

Please provide your written response to these findings and recommendations, including corrective actions taken or planned, by May 14, 2009. In accordance with General Statute § 147.64.6 (c) (12), the Governor, the Attorney General, and other appropriate officials will receive a copy of this management letter. If you have any questions or wish to discuss this matter further, please contact us. We appreciate the cooperation received from employees of the Department of Administration.

Sincerely,



Beth A. Wood, CPA
State Auditor

Management letters and responses receive the same distribution as audit reports.

⁵ 01 NCAC 05B 0301(4)



North Carolina Department of Administration

Beverly Eaves Perdue, Governor

Britt Cobb, Secretary

July 17, 2009

Honorable Beth Wood, CPA
State Auditor
Office of the State Auditor
20601 Mail Service Center
Raleigh, NC 27699

Dear Mrs. Wood:

We have further reviewed the findings, conclusions, and recommendations that resulted from your audit of the North Carolina State Veterans Nursing Homes. You will find an amended response from the Division of Veterans Affairs and Purchase & Contract Division attached.

Thank you for the opportunity to work with your agency on improving our business practices. We look forward to future collaborative efforts between our agencies.

Sincerely,

A handwritten signature in blue ink, appearing to read "Britt Cobb".

Britt Cobb

Enclosure

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NC Division of Veterans Affairs (NCDVA)
Purchase and Contract Division (P&C)
NC State Veterans Nursing Homes
Response to findings and recommendations as delivered 4/30/09

1. Non-State Employees Drive State-owned Vehicles in Violation of State Regulations:

Recommendation: The Department of Administration should find a legal remedy that authorizes Contractor employees of the State-owned veterans nursing homes to drive State-owned vehicles.

Response: It is essential for the state nursing homes contract employees to drive the State Veterans Homes vehicles for daily operations and continuing care of each veteran. It is the intent of the N.C. Department of Administration's Division of Veteran's Affairs to resolve this issue by requesting, if needed, legislation to amend NCGS 165 to allow employees of the contract nursing care provider to operate vehicles owned by the State Veterans Homes.

2. Contract Duration Exceeded Statutory Limitations:

Recommendation: The Department of Administration should comply with G.S. 165-50 by soliciting a proposal for a new contract for the procurement of services to manage, administer, and operate the two State veterans nursing homes.

Response: On March 9, 2009 an amendment was made to the RFP #13-56286 to extend the contract from March 4, 2009 to November 30, 2009 for the express purpose of preparing an RFP for re-bidding the contract for "Management and Operations of Skilled Nursing Care facilities (NC State Veterans Homes facilities)." NCDVA and P&C are currently drafting the RFP and are preparing to re-bid the contract per the recommendation.

3. Inventory Control Weakness:

Recommendation: NCDVA should continue to ensure physical inventories are conducted annually, computers are properly tagged for identification, and equipment transferred from one facility to another is properly documented. Any surplus computer equipment must be fully documented as well. In addition, the inventory list should be maintained and all State property safeguarded in compliance with the policies and procedures set forth by the Office of the State controller.

Response: Veterans Affairs will continue to ensure accurate inventories of all assets including computers. To that end, a review of NCDVA inventory control measures is underway. As to the particular computer identified in the audit, NCDVA has confirmed that no sensitive information was ever entered into or stored on the subject computer.

Additionally, all state computer matters are now addressed by the NCDVA Computer Network Administrator (state employee). This includes management, operations, repairs, installation and surplus of all state computers. All other state property is disposed of according to the State of North Carolina policies and procedures.

4. Noncompliance with Contract Terms:

Recommendation: Veterans Affairs should recover the cost of computers purchased or seek a retroactive reduction of the management of for these purchases. In addition, Department of Administration management should write future contracts in unequivocal language reflecting the full intentions of the agreeing parties including what will be provided and by whom consistent with the North Carolina Administrative code. Requirements for State contracts are set forth in the Administrative Code with states, “Task descriptions shall contain...(c) what the State shall furnish; (d) what the contractor shall furnish...”

Response: From the commencement of the current contract, the intent was not for the contractor to buy the individual computers; as indicated by Addendum #4, question #56. The contract should have been written more clearly; specifically the word “contractor’s” should have been included in the last sentence. In the preparation of the proposed RFP for the next 5 years this matter has been addressed and will be followed closely to increase clarity.